Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Definition of Radio Markets for Areas Not Located in an Arbitron Survey Area	)	MB Docket 03-130
	)	
	)	

To: The Commission

COMMENTS OF
INDEPENDENT BROADCASTERS FOR OWNERSHIP REFORM

Independent Broadcasters for Ownership Reform[1] hereby submits its "35 Mile Market Radius" proposal for an equitable, uniform, rational, market-based method for the determination of the number of radio broadcast station in an unrated radio market under Section 73.3555 of the Commission's rules. This proposal is submitted pursuant to the Notice of Proposed Rulemaking ("NPRM"), FCC 03-124, released July 2, 2003.[2] In support of its proposal, the following is submitted:

1. **Introduction.** Independent Broadcasters for Ownership Reform is concerned that the methods proposed by the Commission in the NPRM to determine the number of stations in a radio market for markets not surveyed by Arbitron will put broadcasters in non-rated markets into a regulatory scheme wholly unrelated to the actual market in which radio advertising time is sold. Neither the FCC proposed cellular telephone market definition, nor the FCC proposed micropolitan market definition, have any real world relevance to what suppliers and customers of the radio broadcasting industry regard as the market area of a radio station. Therefore, if the

[1] Independent Broadcasters for Ownership Reform is an ad hoc group of medium and small market radio broadcasters operating in unrated markets including: The Cromwell Group, Priority Communications, Inc.; Georgia-Carolina Radiocasting Companies; K95.5, Inc.; Bick Broadcasting Company; Murphy Broadcasting; Lovcom, Inc.; Miller Media Group; Eastern Shore Radio, Inc.; Ad-Venture Media, Inc.; WTUZ Radio, Inc.; and Mentor Partners, Inc.

[2] The deadline date for Comments, as extended in FCC Report No. DA-03-2639, is October 6, 2003. Accordingly, these Comments are timely filed.

Commission must change the present contour overlap rule, Independent Broadcasters for Ownership Reform advances a proposal that has real world relevance to how third party suppliers and customers of the radio industry regard the market area for radio stations in non-rated markets.

2. **Retention of Existing Contour Overlap Methodology.** Independent Broadcasters for Ownership Reform believes that the present method of contour overlap is an entirely acceptable method of determining radio markets and therefore as an initial matter supports the retention of the existing contour overlap method for determining the number of stations in a market. If, however, the Commission determines that the present contour overlap method shall not be retained, Independent Broadcasters for Ownership Reform submits this proposal for a 35 mile market radius.

3. **Proposed 35 Mile Market Radius Calculation Method.** If the present contour overlap method is to be abandoned, Independent Broadcasters for Ownership Reform proposes that the Commission adopt the following method for determining the number of radio stations in the "market" in non-Arbitron rated markets for the purposes of Section 73.3555 of the Commission's rules:

- **The market for each radio station is a radius of 35 miles from the station's transmitter site.**
- **The number of radio stations in each radio station's market for the purposes of Section 73.3555 of the Commission's rules is the number of other transmitter sites for full service AM & FM radio broadcasting stations, commercial and non-commercial, within a 35 mile radius of the subject station's transmitter site.**[3]
- **A single owner can own up to the maximum number of stations allowed under Section 73.3555 of the Commission's rules based upon the number of total transmitter sites located within a 35 mile radius of each subject station.**

4. Independent Broadcasters for Ownership Reform supports the 35 mile radius as it is its members' collective experience that this is the approximate radius of mileage exclusivity

[3] The Commission should maintain the current criteria it uses in assessing whether a station is to be counted, including counting stations that may not yet be licensed but are operating pursuant to program test authority, but excluding stations that are unbuilt construction permits.

afforded to radio broadcast stations by independent radio program suppliers (i.e. suppliers of syndicated programming, suppliers of bartered programming and the like). It is recognized that some program suppliers will grant exclusivity in excess of a 35 mile radius, while other grants of exclusivity will be less than a 35 mile radius or based upon another criteria altogether (most of the time the other criteria is an Arbitron market based criteria which is inapplicable by definition to this proceeding addressing unrated markets). Independent Broadcasters for Ownership Reform believes that a radius of 35 miles represents the collective judgment of the programming marketplace over years of radio broadcasting and is a market definition that is freely reached by arms-length negotiations between radio station licensees and program suppliers who each have a stake in the definition of radio markets.

5. Further, a review of the sales practices of radio station sales representatives reveals that a distance of approximately 35 miles is the distance that most radio station salespeople will travel from the station to offer radio advertising time to local businesses. Likewise, local businesses in unrated radio markets generally expect to draw their customers from a 35 mile radius from their place of business. The choice of 35 miles may be criticized as possibly arbitrary as a mileage of 30 miles or 40 miles might be just as rational a choice. When more extreme alternatives are considered, however, it is apparent that 35 miles represents a sensible approximation, as few broadcast salespersons will routinely travel distances of 70 or 80 miles to sell radio time, nor would retail outlets in most general merchandise situations normally expect to draw customers from such a distance. Conversely, a radio time salesperson who limited his or her sales area to a radius of 15 or 20 miles would be severely impacting his or her earning potential.

6. **Examples of 35 Mile Market Radius Calculation Method.** The following are some examples of the application of the proposed 35 mile market radius definition calculation method for unrated radio markets:

- **Example 1:** Under Figure 1 below, assume the contemplated acquisition of four stations, three in the same service (for instance, three FM stations and one AM station) by a single owner broadcasting from the same transmitter site. In addition to those four stations, within the 35 mile radius of the stations' identical transmitter site there are five other full service broadcasting stations each marked "Station X". Accordingly, within the market of each station proposed to be co-owned, there are nine stations. Under Section 73.3555 of the Commission's rules, this is an acceptable combination as in markets with less than fifteen stations, a total of five stations with no more than three in the same service may be owned. Further, four of the nine stations are below the 50% limit of total stations allowed to be owned under Section 73.3555 of the Commission's rules.

	Number of Stations in Market (including co-owned)	Number of Co-Owned FM Stations in Market	Number of Co-Owned AM Stations in Market
Station A	9	3	1
Station B	9	3	1
Station C	9	3	1
Station D	9	3	1

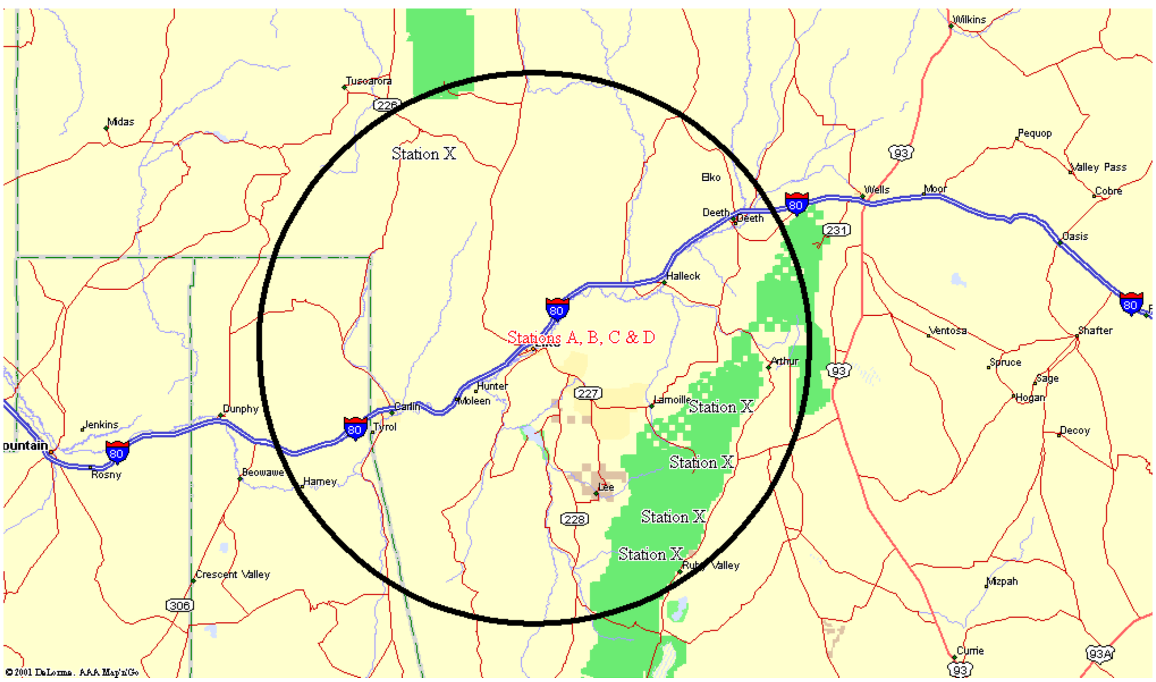

Figure 1

- **<u>Example 2</u>**: Another example is Figure 2 below which assumes the contemplated acquisition of two same service stations with each having a transmitter site more than 35 miles from one another but overlapping 35 mile radii. Under this situation, even though there is overlap of the 35 mile radii, there is no radio multiple ownership analysis to be done as neither of the two stations are within the other's market.

	Number of Stations in Market (including co-owned)	Number of Co-Owned FM Stations in Market	Number of Co-Owned AM Stations in Market
Station A	6	1	0
Station B	1	1	0

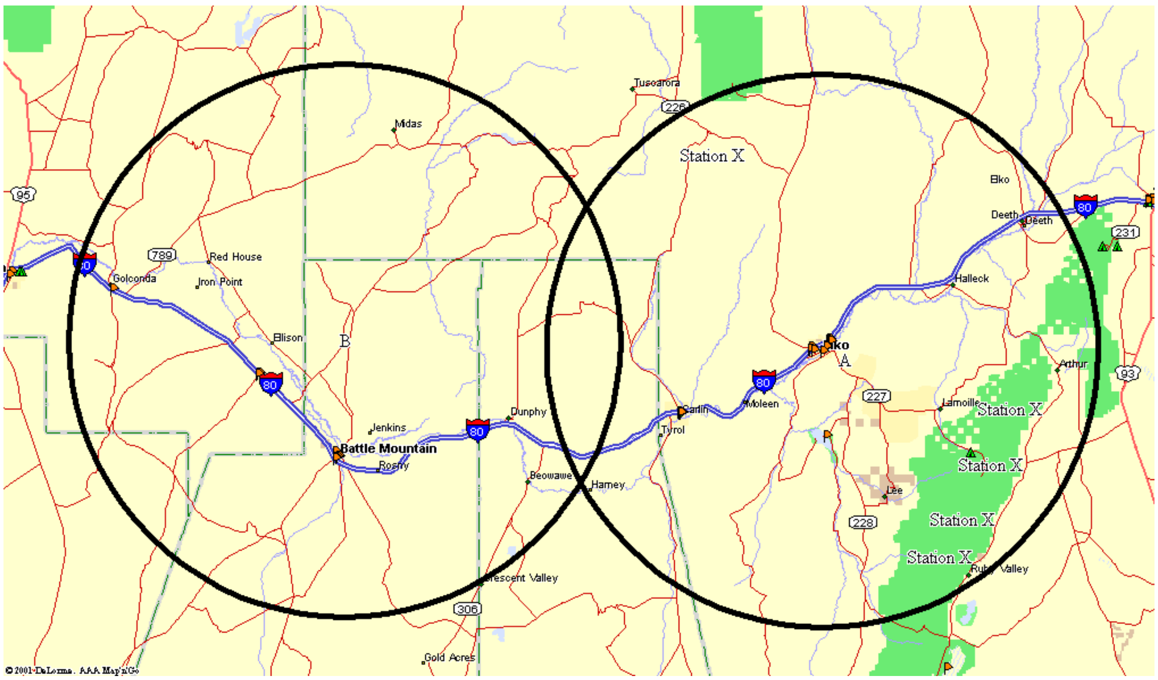

Figure 2

- **<u>Example 3</u>:** Under Figure 3 below, assume the contemplated acquisition of four same service stations (Stations A, B, C & D) with Stations A, B, C & D in a daisy chain formation. Station A is just slightly less than 35 miles distant from Station B, Station B is just slightly less than 35 miles distant from Station C, and Station C is just slightly less that 35 miles distant from Station D.

	Number of Stations in Market (including co-owned)	Number of Co-Owned FM Stations in Market	Number of Co-Owned AM Stations in Market
Station A	7	2	0
Station B	4	3	0
Station C	3	3	0
Station D	2	2	0

- Analysis for Station A. Within the 35 mile radius of Station A, there are five other broadcast station transmitter sites for stations which are not proposed to be co-owned, each marked "Station X", and one transmitter site for a station that is proposed to be co-owned, marked "B", for a total of seven stations within the market for Station A. Station B may be co-owned with Station A as there are seven stations in the radio market for Station A, assuming that the analysis for Station B reveals that it may be owned with Station A.

- Analysis for Station B. Within the 35 mile radius of Station B, there is Station A and Station C each of which is proposed to be co-owned, and one other broadcast station which is not proposed to be co-owned marked "Station X" for a total of four stations within the market for Station B. Since there are four stations in the market, Station A may also be co-owned with Station B, but the same owner cannot own Station C. If Station A was not to be co-owned, the same owner could own Station C assuming the analysis for Station C reveals that it may be owned with Station B.

- Analysis for Station C. Within the 35 mile radius of Station C, there are two other transmitter sites, Station B and Station D. Since there are only three stations in the market, three of the three may not be co-owned and therefore Stations B and C may not be co-owned as it would violate the 50% limitation in Section 73.3555.

- Analysis for Station D. Within the 35 mile radius of Station D, there is only one other transmitter site, for Station C. Since there are only two stations in the market, Stations D and C may not be co-owned as it would violate the 50% limitation in Section 73.3555.

- Results of Analysis of Stations A, B, C, and D in Figure 3. Station A and Station B may be co-owned. Station B and Station C may not be co-owned, nor may Station C and Station D be co-owned, as the ownership of two out of the three same service stations in Market C, or two out the three same service stations in Market D would violate the 50% limitation in Section 73.3555. The ownership of Stations B and D would be acceptable as despite the overlapping 35 mile radii, each of Stations B and D would be the only owned station within the respective 35 mile radius of each of Stations B and D.

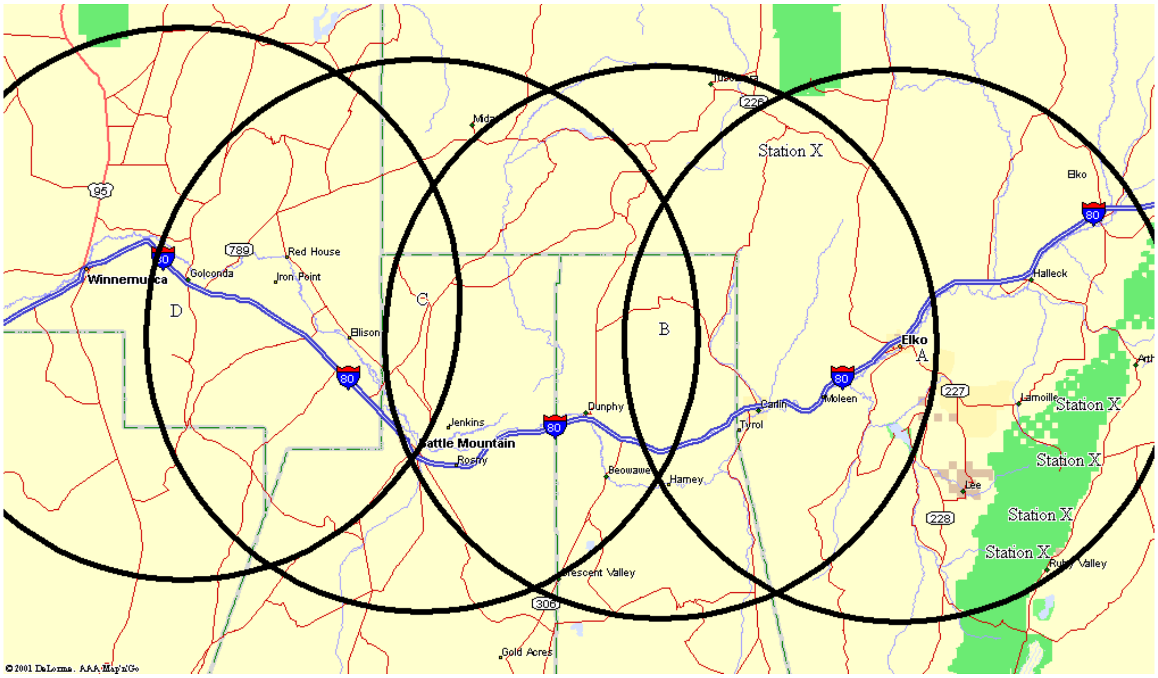

Figure 3

7. **Attributes of 35 Mile Market Radius Calculation Method.** The 35 mile market radius calculation method proposed by Independent Broadcasters for Ownership Reform has as its important attributes consistency, equity and ease of computation. Any computational method that relies upon differing market sizes for different stations will create ownership anomalies that are not in the public interest. For radio market definitions that rely on regional specifications such as cellular markets, micropolitan areas or counties, a kind of anomaly presents itself. If a wide area such a cellular RSA or a county is chosen as the radio market definition, an owner will be limited to the number of stations that may be owned in the region. For most such wide regions, however, there will be 45 or more radio stations in the defined market, and there will be no restriction on one owner owning all eight allowed stations in one particular community (i.e. such as in the much discussed Minot, North Dakota situation). Conversely, if radio markets are geographically defined so as to be so small that an owner can perhaps own only an AM and FM combination in the market, it will greatly limit the future for small market broadcasters, many of whom need the most assistance from ownership deregulation for their survival. In addition, using a small geographic market will enable one owner (perhaps one of the publicly traded companies owning thousands of stations) to be able to strategically acquire stations in nearby neighboring markets and own several clusters of stations at maximum limits, possibly two or

three clusters of five stations each, in a region where now only the ownership of five may be allowed, thus diminishing the ownership opportunities for other owners of broadcast stations in smaller markets.

8. The 35 mile market radius proposal of Independent Broadcasters for Ownership Reform represents consistency. Radio station licensees will be able to plan business affairs with certainty knowing that if a proposed combination meets the specified criteria, the transaction will be approved by the Commission. In any particular geographic region of a 35 mile radius from any station's transmitter site, there will be a set number of radio stations that may be commonly owned based upon the number of other broadcast station transmitter sites within 35 miles of the subject station.

9. In addition, the 35 mile market radius proposal of Independent Broadcasters for Ownership Reform represents equity. Unlike the present contour overlap rule, owners of smaller broadcast facilities are not treated differently than owners of stations with greater coverage. With the present contour overlap rules, by definition the radio market is considered a larger geographic area for higher powered radio stations thus allowing for the combination of more (high power) stations, while lesser power stations are restricted from owning a similar combination of stations in order to fairly compete. For example, under the present contour overlap system, an owner of a Class C FM station in a particular community can often acquire substantially greater numbers of closely located co-owned stations than can an owner of a Class A station located in the same community. This is the antithesis of the result that should be obtained. As the Class C station owner has more market power already from the significant coverage area afforded by its Class C station, under equitable and market principles it should be the owner of the Class A station that is accorded the right to acquire more stations in order to compete with the more substantial coverage and greater market power of the Class C station owner. Unfortunately, under the present contour overlap methodology, the opposite is true.

10. Finally, the 35 mile market radius proposal represents ease of computation. Any broadcaster or other party can quickly determine from information publicly available through the

Commission's CDBS or on a complimentary basis from a private firm the number of stations that may be owned in a 35 mile radius from a particular broadcast station.[4]

11. **<u>Need in Unrated Markets for Unlimited Transferability</u>.** No matter which calculation method the Commission chooses for unrated markets, above all the Commission must preserve the ability of existing groups of stations formed in reliance upon existing Commission rules to be transferred as a group to subsequent owners. The business of small market broadcasting is not an easy business. It is often said that only those individuals who truly love radio broadcasting and who take a certain pride in serving the community are small market broadcasters.

12. Many small market broadcasters are individual owners, families or groups of local businesspersons who through very hard work and great risk, put together a viable business consisting of a group of radio stations. Through the relaxation of the ownership rules in the time period between 1992 and 2003, many small market broadcasters have been able to put together viable combinations of radio stations that serve local communities well.[5]

13. If small market station combinations were only allowed to be transferred intact as a group once, or if other restraints were put on existing combinations of small market broadcast stations, it would be the individuals, families and groups of local businesspersons who would greatly suffer. Many stations in smaller markets have had their physical facilities changed so that the divestiture or spinning off of stations, either now or in the future, would require the construction of new studio facilities and the hiring of entire new administrative, sales and programming staffs. A lack of unlimited transferability of existing combinations would greatly diminish the value that such station groups now have.

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[4] The number of stations that may be owned in any market situation may be determined by plotting the transmitter sites of neighboring stations within a 35 mile radius on a topographic map using the geographic coordinates available from CDBS. In addition, the engineering firm of Cavell, Mertz & Davis Inc. has a free web-based calculation tool that will accomplish the same task of listing every station within a certain distance of particular geographic coordinates at www.fccinfo.com.

[5] Those on the Commission's staff who remember Docket 80-90 and the drop-in of numerous new stations into the smaller markets will remember the plight of small market broadcaster before consolidation was allowed. With Docket 80-90, small markets went from perhaps three or four listenable signals to 15 or 20 listenable signals. The level of competition increased so dramatically that many small market broadcasters feared that they would not be able to continue in business.

14. Therefore, existing combinations that were formed in reliance of rules put into place by the FCC to foster and encourage such combinations should be allowed to continue through subsequent changes in ownership. Otherwise, the result will be that individuals, families and groups of local businesspersons who are licensees will pay a huge financial penalty when the time comes to sell the stations because of death, disability, or retirement. And equally as important, unless there is unlimited transferability of existing groups, those stations now owned by larger groups will never be sold to new entrants if full value cannot be obtained for the group due to transferability restrictions.

15. **Conclusion.** Independent Broadcasters for Ownership Reform did a number of calculations with the 35 mile market radius and its proposed method of determining the number of stations in unrated radio markets. If a lesser radius was chosen, more co-owned radio station clusters will be able to locate closer together (i.e., there could be two clusters of five radio stations within 25 miles of each other for a total of 10 co-owned stations which would not presently be allowed). If a greater radius was chosen, there would be a greater number of markets in which the number of stations will exceed 45 stations allowing for the co-ownership of eight stations, an ownership situation that presumably was intended by the Congress and the Commission only for major radio markets such as New York, Los Angeles and Chicago. Neither situation would serve the public interest of diversity of ownership in smaller markets while still allowing for the small market broadcaster to compete on an equitable basis with other media.

16. The 35 mile market radius method appears to result, when existing ownership combinations are reviewed and excluding certain existing anomalous situations, in a similar number of stations in a market calculated by the current contour overlap method.[6] While this is not a reason in itself for choosing a 35 mile radius, it affirms the rationality of the method and also insures that this proposed change in defining how the number of stations in unrated markets

[6] It is also believed by Independent Broadcasters for Ownership Reform that this 35 mile radius market calculation method could just as successfully be used by the FCC for stations in Arbitron rated markets. These comments, however, do not take any position on that aspect.

are be counted will not effect a dramatic and perhaps hugely harmful change in smaller radio markets.

17. WHEREFORE, for the reasons above, Independent Broadcasters for Ownership Reform proposes a radio market definition for unrated radio markets based upon a radius of 35 miles from a station's transmitter site.

Respectfully submitted,

INDEPENDENT BROADCASTERS
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